



DEVELOPMENT SERVICES DEPARTMENT 797-1111

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TOWN OF DAVIE 6591 ORANGE DRIVE, DAVIE, FLORIDA 33314-3399 (954) 797-1030

MEMORANDUM

PZ 09-29-02

TO: Mayor and Councilmembers

THRU: Thomas J. Willi, Town Administrator

THRU: Mark A. Kutney, AICP, Development Services Director

THRU: Fernando Levia, AICP, Planning and Zoning Manager

FROM: Marcie Nolan, AICP, Planner III
Roberta Moore, Planner I
Todd Vargo, Planner I

DATE: September 27, 2002

RE: Establishment of the Davie Land Trust

The Planning and Zoning staff has researched several means of protecting the existing rural farms of the Town of Davie. The most viable option at this time is the creation of a non-profit entity, separate from the Town, called the Davie Land Trust.

Land trusts have several alternatives available for a property owner to allow farm land and other undeveloped land to remain in their current state. These alternatives include the creation of conservation easements or the outright purchase of development rights.

The benefits to creating a land trust include access to foundation monies for conservation easements and purchase of development rights which local governments are usually not eligible for and Federal and State grants.

Planning and Zoning staff have met with members of the Florida Land Trust Alliance (FLTA). The FLTA is willing to assist the Town of Davie in setting up a 501(3)C to establish a land trust. Typical incorporation fees for creating a land trust are \$1,500, however, the Land Trust Alliance is willing to help defer the cost due to the fact that Davie would be the first municipality in the State to establish a Land Trust.

The Town of Davie has various boards which are committed to protecting open space within the Town. These members could establish a Board of Directors for the Davie Land Trust. Town staff could provide technical support.

In conclusion, Staff recommends the Town of Davie discuss adopting a resolution to establish and support a Davie Land Trust in order to establish conservation easements and purchase development rights.

Please find attached an outline on land trusts and Florida Statute 689.071 to help answer any questions you may have.

Thank you.

WHAT IS A LAND TRUST?

- Land trusts are an instrument used in protecting land.
- A land trust is an arrangement whereby one person (the trustee) holds both legal and equitable title to real estate and holds it for the benefit of another party (the beneficiary). The land trusts transforms the equitable interest in the land into an interest in personal property.
- The requirements for forming a Florida land trust are that it fulfills two conditions in Florida Statute, Section 689.071. Those requirements are that an instrument conveys an interest in real property to a trustee without naming the beneficiaries, and that the trustees be given certain powers to deal with the property. Once these requirements have been fulfilled, the trust is entitled to the benefits of the land trust statute.
- There are two documents necessary for a land trust. These include a deed which contains the proper language and the trust agreement.
- There is no public record of the owners of a land trust. The trustee is listed as the owner and only he or she knows who the beneficiary is.
- A Florida land trust does not file any tax returns. For tax purposes, the trust is disregarded and all taxable activities of the trust are reported on the returns of the beneficiaries.
- Land trusts are local, state, or regional nonprofit organizations directly involved in protecting land for its natural, recreational, scenic, historical, or productive value. Most land trusts are private, nonprofit corporations. There are also a few governmental or quasi-governmental bodies called land trusts that operate with the freedom and flexibility of a private trust.
- Some land trusts purchase or accept donations of land or of conservation easements. Some manage land owned by others or advise landowners on how to preserve their land. Some land trusts help negotiate conservation transactions in which they play no other role.
- Land trusts work cooperatively with government agencies by acquiring or managing land, researching open space needs and priorities, and assisting in the development of open space plans.
- Resources protected by land trusts include forests, urban gardens, farmland, parklands, marshes, ranchland, hiking trails and cultural landscapes.

DRAWBACK TO A LAND TRUST

- There may be possible problems obtaining a homestead tax exemption when property is in a land trust.
 - Solutions
 - Give a life estate to the person claiming homestead.
 - Recite in the body of the deed that the person claiming homestead has the right to the use and possession of the property for his natural life.

Standards involved in a land trust

- A land trust must have a clear purpose and goals.
- The board of directors must assume legal responsibility and accountability for the affairs of the organization.
- A land trust must have help from volunteers, consultants, and in many cases paid staff, with appropriate skills and in sufficient numbers to carry out its programs.
- A land trust must be selective in choosing land-saving projects.
- A land trust must select the best available method for protecting each property.
- A land trust must know the property it protects.
- A land trust must carry out a program of responsible stewardship for its easements.

F.S. 689.071 Land trusts transferring interests in real estate; ownership vests in trustee. —

(1) Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as "the recorded instrument," transferring any interest in real property in this state, including but not limited to a leasehold or mortgagee interest, to any person, corporation, bank, trust company, or other entity qualified to act as a fiduciary in this state, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated "trustee," or "as trustee," without therein naming the beneficiaries of such trust, whether or not reference is made in the recorded instrument to any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee full rights of ownership over the real property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the property or interest therein or any part thereof; provided, the recorded instrument confers on the trustee the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.

(2) Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the trustee with respect to the real properties held in trust under the recorded instrument, as hereinabove provided for, is not obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument, whether or not such declarations or agreements are referred to therein; or to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under the recorded instrument; or to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such trustee in connection with any interest so acquired from such trustee; or to inquire into any of the provisions of any such unrecorded declarations or agreements.

(3) All persons dealing with the trustee under the recorded instrument as hereinabove provided take any interest transferred by the trustee thereunder, within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in the recorded instrument or not, and of anyone claiming by, through, or under such beneficiaries including, and without limiting the foregoing to, any claim arising out of any dower or curtesy interest of the spouse of any beneficiary thereof; provided, nothing herein contained prevents a beneficiary of any such unrecorded collateral declarations or agreements from enforcing the terms thereof against the trustee.

(4) In all cases in which the recorded instrument, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries thereunder to be personal property only, such provision shall be controlling for all purposes when such determination becomes an issue under the laws or in the courts of this state.

(5) In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the provisions of s. 737.306 apply to the trustee of a land trust created pursuant to this section.

(6) This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

(7) This act does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-468; s. 1, ch. 84-31; s. 2, ch. 2002-233.

